

BEFORE THE ARIZONA MEDICAL BOARD

In the Matter of

**JOHN C. MORGAN, M.D.**

License No. 25871

For the Practice of Allopathic Medicine  
In the State of Arizona.

Case No. MD-06-0259A

**CONSENT AGREEMENT FOR  
LETTER OF REPRIMAND AND  
PROBATION**

**CONSENT AGREEMENT**

By mutual agreement and understanding, between the Arizona Medical Board ("Board") and John C. Morgan, M.D. ("Respondent"), the parties agreed to the following disposition of this matter.

1. Respondent has read and understands this Consent Agreement and the stipulated Findings of Fact, Conclusions of Law and Order ("Consent Agreement"). Respondent acknowledges he has the right to consult with legal counsel regarding this matter.

2. By entering into this Consent Agreement, Respondent voluntarily relinquishes any rights to a hearing or judicial review in state or federal court on the matters alleged, or to challenge this Consent Agreement in its entirety as issued by the Board, and waives any other cause of action related thereto or arising from said Consent Agreement.

3. This Consent Agreement is not effective until approved by the Board and signed by its Executive Director.

4. The Board may adopt this Consent Agreement of any part thereof. This Consent Agreement, or any part thereof, may be considered in any future disciplinary action against Respondent.

5. This Consent Agreement does not constitute a dismissal or resolution of other matters currently pending before the Board, if any, and does not constitute any

1 waiver, express or implied, of the Board's statutory authority or jurisdiction regarding any  
2 other pending or future investigation, action or proceeding. The acceptance of this  
3 Consent Agreement does not preclude any other agency, subdivision or officer of this  
4 State from instituting other civil or criminal proceedings with respect to the conduct that is  
5 the subject of this Consent Agreement.

6         6. All admissions made by Respondent are solely for final disposition of this  
7 matter and any subsequent related administrative proceedings or civil litigation involving  
8 the Board and Respondent. Therefore, said admissions by Respondent are not intended  
9 or made for any other use, such as in the context of another state or federal government  
10 regulatory agency proceeding, civil or criminal court proceeding, in the State of Arizona or  
11 any other state or federal court.

12         7. Upon signing this agreement, and returning this document (or a copy thereof)  
13 to the Board's Executive Director, Respondent may not revoke the acceptance of the  
14 Consent Agreement. Respondent may not make any modifications to the document. Any  
15 modifications to this original document are ineffective and void unless mutually approved  
16 by the parties.

17         8. If the Board does not adopt this Consent Agreement, Respondent will not  
18 assert as a defense that the Board's consideration of this Consent Agreement constitutes  
19 bias, prejudice, prejudgment or other similar defense.

20         9. This Consent Agreement, once approved and signed, is a public record that  
21 will be publicly disseminated as a formal action of the Board and will be reported to the  
22 National Practitioner Data Bank and to the Arizona Medical Board's website.

23         10. If any part of the Consent Agreement is later declared void or otherwise  
24 unenforceable, the remainder of the Consent Agreement in its entirety shall remain in force  
25 and effect.

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11. Any violation of this Consent Agreement constitutes unprofessional conduct and may result in disciplinary action. A.R.S. § § 32-1401(27)(r) ("[v]iolating a formal order, probation, consent agreement or stipulation issued or entered into by the board or its executive director under this chapter") and 32-1451.

12. Respondent has read and understands the condition(s) of probation.

  
JOHN C. MORGAN, M.D.

DATED: 1/10/07

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**FINDINGS OF FACT**

1. The Board is the duly constituted authority for the regulation and control of the practice of allopathic medicine in the State of Arizona.

2. Respondent is the holder of license number 25871 for the practice of allopathic medicine in the State of Arizona.

3. The Board initiated case number MD-06-0259A after receiving a complaint regarding Respondent's care and treatment of an eighty-five year-old female patient ("LS").

4. On January 16, 2006 Respondent and his certified nursing assistant ("CNA") visited LS at an assisted living facility for an examination. While Respondent examined LS and noted her medical history, CNA looked at LS's medications and saw she had one and one-half boxes of Fentanyl patches. LS indicated she was not using the Fentanyl patches. At the request of LS's family CNA removed the Fentanyl patches from LS's medications and took the remaining patches back to Respondent's office for disposal into a biohazard container. Respondent did not record that LS had the Fentanyl patches or her history of using the Fentanyl patches. Respondent also did not record his instructions to CNA regarding disposal of the Fentanyl patches.

5. On March 20, 2006 Respondent and CNA visited LS again for an examination. LS complained of back pain and sciatica. After Respondent examined LS CNA left the room and Respondent approached LS while she was sitting in her chair and kissed her. On March 26, 2006 Board Staff interviewed LS and she reiterated her account of Respondent kissing her on the forehead, cheek and mouth during his March 20, 2006 visit.

6. On April 3, 2006 Board Staff interviewed Respondent and he admitted kissing LS on the forehead to comfort her. He later underwent a polygraph examination

1 that confirmed his statement that he did not kiss LS anywhere other than on the forehead.  
2 Respondent also provided the Board with a list of medications prescribed to him.  
3 Respondent was required to undergo an evaluation at the Sexual Recovery Institute  
4 ("SRI"). SRI recommended Respondent participate in out-patient psychotherapy with a  
5 specialist in trauma and offending behaviors. SRI also found Respondent's instructing  
6 CNA to remove the Fentanyl "patches odd and deceitful" and "rais[ed] unanswered  
7 questions and cast some suspicion on [Respondent's] motives and behaviors." Board Staff  
8 recommended Respondent meet with the Board's contracted addiction medicine specialist  
9 ("Specialist") regarding possible drug abuse.

10 7. On April 6, 2006 Board Staff performed an on-site inspection of  
11 Respondent's office and discovered Respondent's biohazard waste container had six  
12 individual Fentanyl patches placed on one side of the container. Respondent stated the  
13 patches were not disposed of at the assisted living facility because there was no biohazard  
14 container on those premises.

15 8. On April 28, 2006 Specialist interviewed Respondent and requested he  
16 submit to a urine drug screen. Respondent voluntarily submitted to the test and tested  
17 positive for Methadone. Methadone was not included on medication list Respondent  
18 provided to the Board on April 3, 2006. On May 3, 2006 Respondent met with Specialist  
19 and Board Staff regarding possible substance abuse. Respondent admitted to occasionally  
20 taking Percodan he received from a neighbor for his back. Board Staff gave Respondent  
21 the option of obtaining an evaluation for substance abuse or attending residential  
22 treatment. Respondent chose to attend a thirty-day treatment program (Program #1)  
23 beginning on May 7, 2006. During treatment a hair test analysis was positive for  
24 dihydrocodeine, Hydrocodone, and Oxycodone. The hair test covers a four month  
25 timeframe. Respondent was diagnosed with opioid abuse.

1           9.     On May 18, 2006 Respondent entered a six week residential treatment  
2 program (Program #2) to complete his treatment for substance abuse. Respondent was  
3 diagnosed as opiate dependent. Program #2 recommended Respondent attend alcoholics  
4 anonymous and narcotics anonymous meetings with continued on-going out-patient  
5 treatment.

6           10.    A physician is required to maintain adequate legible medical records  
7 containing, at a minimum, sufficient information to identify the patient, support the  
8 diagnosis, justify the treatment, accurately document the results, indicate advice and  
9 cautionary warnings provided to the patient and provide sufficient information for another  
10 practitioner to assume continuity of the patient's care at any point in the course of  
11 treatment. A.R.S. § 32-1401(2). Respondent's records were inadequate because he did  
12 not record that LS had Fentanyl patches or that CNA disposed the Fentanyl patches at the  
13 request of LS's family.

#### 14                                   **CONCLUSIONS OF LAW**

15           1.     The Board possesses jurisdiction over the subject matter hereof and over  
16 Respondent.

17           2.     The conduct and circumstances described above constitute unprofessional  
18 conduct pursuant to A.R.S. § 32-1401(27)(e) ("[f]ailing or refusing to maintain adequate  
19 records on a patient.").

20           3.     The conduct and circumstances described above constitute unprofessional  
21 conduct pursuant to A.R.S. § 32-1401(27)(f) ("[h]abitual intemperance in the use of alcohol  
22 or habitual substance abuse.").

23           4.     The conduct and circumstances described above constitute unprofessional  
24 conduct pursuant to A.R.S. § 32-1401(27)(g) ("[u]sing controlled substances except if  
25 prescribed by another physician for use during a prescribed course of treatment.").

5. The conduct and circumstances described above constitute unprofessional conduct pursuant to A.R.S. § 32-1401(27)(z) (“[e]ngaging in sexual conduct with a current patient or with a former patient within six months after the last medical consultation unless the patient was the licensee’s spouse at the time of the contact or, immediately preceding the physician-patient relationship, was in a dating or engagement relationship with the licensee, for purposes of this subdivision, “Sexual Conduct” includes: (i) [e]ngaging in or soliciting sexual relationships, whether consensual or nonconsensual. (ii) [m]aking sexual advances, requesting sexual favors or engaging in other verbal conduct or physical contact of a sexual nature. (iii) [i]ntentionally viewing a completely or partially disrobed patient in the course of treatment if the viewing is not related to patient diagnosis or treatment under current practice standards.”).

## ORDER

IT IS HEREBY ORDERED THAT:

1. Respondent is issued a Letter of Reprimand for failure to document the disposal of the Fentanyl patches in the medical records, for engaging in sexual conduct with a patient, and for habitual intemperance.

2. Respondent is placed on probation for **five years** with the following terms and conditions:

a. Respondent shall submit quarterly declarations under penalty of perjury on forms provided by the Board, stating whether there has been compliance with all conditions of probation. The declarations shall be submitted on or before the 15th of March, June, September and December of each year, beginning on or before March 7, 2006

b.1. **Participation.** Respondent shall promptly enroll in and participate in the Board's program for the treatment and rehabilitation of physicians who are impaired by

1 alcohol or drug abuse ("MAP"). Respondent's participation in MAP may be unilaterally  
2 terminated with or without cause at the Board's discretion at any time after the issuance of  
3 this Order.

4       **2. Relapse Prevention Group.** Respondent shall attend MAP's relapse  
5 prevention group therapy sessions one time per week for the duration of this Order, unless  
6 excused by the MAP relapse prevention group facilitator for good cause such as illness or  
7 vacation. Respondent shall instruct the MAP relapse prevention group facilitators to  
8 release to Board Staff, upon request, all records relating to Respondent's treatment, and to  
9 submit monthly reports to Board Staff regarding attendance and progress. The reports  
10 shall be submitted on or before the 10th day of each month.

11       **3. 12 Step or Self-Help Group Meetings.** Respondent shall attend ninety 12-  
12 step meetings or other self-help group meetings appropriate for substance abuse and  
13 approved by Board Staff, for a period of ninety days beginning not later than either (a) the  
14 first day following Respondent's discharge from chemical dependency treatment or (b) the  
15 date of this Order.

16       **4.** Following completion of the ninety meetings in ninety days, Respondent shall  
17 participate in a 12-step recovery program or other self-help program appropriate for  
18 substance abuse as recommended by the MAP Director and approved by Board Staff.  
19 Respondent shall attend a minimum of three 12-step or other self-help program meetings  
20 per week for a total of twelve per month. Two of the twelve meetings must be Caduceus  
21 meetings. Respondent must maintain a log of all self-help meetings. Board Staff will  
22 provide the log to Respondent.

23       **5. Board-Staff Approved Primary Care Physician.** Respondent shall  
24 promptly obtain a primary care physician and shall submit the name of the physician to  
25 Board Staff in writing for approval. The Board-approved primary care physician ("PCP")



1 shall be in charge of providing and coordinating Respondent's medical care and treatment.  
2 Except in an *Emergency*, Respondent shall obtain medical care and treatment only from  
3 the PCP and from health care providers to whom the PCP refers Respondent.  
4 Respondent shall request that the PCP document all referrals in the medical record.  
5 Respondent shall promptly inform the PCP of Respondent's rehabilitation efforts and  
6 provide a copy of this Order the PCP. Respondent shall also inform all other health care  
7 providers who provide medical care or treatment that Respondent is participating in MAP.

8 a. "Emergency" means a serious accident or sudden illness that, if not  
9 treated immediately, may result in a long-term medical problem or loss of life.

10 6. **Medication.** Except in an *Emergency*, Respondent shall take no *Medication*  
11 unless the PCP or other health care provider to whom the PCP refers Respondent  
12 prescribes the Medication. Respondent shall not self-prescribe any *Medication*.

13 a. "Medication" means a prescription-only drug, controlled substance,  
14 and over-the counter preparation, other than plain aspirin, plain ibuprofen,  
15 and plain acetaminophen.

16 7. If a controlled substance is prescribed, dispensed, or is administered to  
17 Respondent by any person other than PCP, Respondent shall notify the PCP in writing  
18 within 48 hours and notify the MAP Director immediately. The notification shall contain all  
19 information required for the medication log entry specified in paragraph 8. Respondent  
20 shall request that the notification be made a part of the medical record. This paragraph  
21 does not authorize Respondent to take any *Medication* other than in accordance with  
22 paragraph 6.

23 8. **Medication Log.** Respondent shall maintain a current legible log of all  
24 *Medication* taken by or administered to Respondent, and shall make the log available to  
25 the Board Staff upon request. For *Medication* (other than controlled substances) taken on

1 an on-going basis, Respondent may comply with this paragraph by logging the first and  
2 last administration of the *Medication* and all changes in dosage or frequency. The log, at a  
3 minimum, shall include the following:

- 4 a. Name and dosage of *Medication* taken or administered;
- 5 b. Date taken or administered;
- 6 c. Name of prescribing or administering physician;
- 7 d. Reason *Medication* was prescribed or administered.

8 This paragraph does not authorize Respondent to take any *Medication* other than in  
9 accordance with paragraph 6.

10 **9. No Alcohol or Poppy Seeds.** Respondent shall not consume alcohol or  
11 any food or other substance containing poppy seeds or alcohol.

12 **10. Biological Fluid Collection.** During all times that Respondent is physically  
13 present in the State of Arizona and such other times as Board Staff may direct,  
14 Respondent shall promptly comply with requests from Board Staff or MAP Director to  
15 submit to witnessed biological fluid collection. If Respondent is directed to contact an  
16 automated telephone message system to determine when to provide a specimen,  
17 Respondent shall do so within the hours specified by Board Staff. For the purposes of this  
18 paragraph, in the case of an in-person request, "promptly comply" means "immediately."  
19 In the case of a telephonic request, "promptly comply" means that, except for good cause  
20 shown, Respondent shall appear and submit to specimen collection not later than two  
21 hours after telephonic notice to appear is given. The Board in its sole discretion shall  
22 determine good cause.

23 **11.** Respondent shall provide Board Staff in writing with one telephone number  
24 that shall be used to contact Respondent on a 24 hour per day/seven day per week basis  
25 to submit to biological fluid collection. For the purposes of this section, telephonic notice

1 shall be deemed given at the time a message to appear is left at the contact telephone  
2 number provided by Respondent. Respondent authorizes any person or organization  
3 conducting tests on the collected samples to provide testing results to the Board and the  
4 MAP Director.

5       **12.** Respondent shall cooperate with collection site personnel regarding  
6 biological fluid collection. Repeated complaints from collection site personnel regarding  
7 Respondent's lack of cooperation regarding collection may be grounds for termination from  
8 MAP.

9       **13. Out of State Travel and/or Unavailability at Home or Office Telephone**  
10 **Number.** Respondent shall provide Board Staff at least three business days advance  
11 written notice of any plans to be away from office or home when such absence would  
12 prohibit Respondent from responding to an order to provide a biological fluid specimen or  
13 from responding to communications from the Board. The notice shall state the reason for  
14 the intended absence from home or office, and shall provide a telephone number that may  
15 be used to contact Respondent.

16       **14. Payment for Services.** Respondent shall pay for all costs, including  
17 personnel and contractor costs, associated with participating in MAP at time service  
18 is rendered, or within 30 days of each invoice sent to Respondent.

19       **15. Examination.** Respondent shall submit to mental, physical, and medical  
20 competency examinations at such times and under such conditions as directed by the  
21 Board to assist the Board in monitoring Respondent's ability to safely perform as a  
22 physician and Respondent's compliance with the terms of this Order.

23       **16. Treatment.** Respondent shall submit to all medical, substance abuse, and  
24 mental health care and treatment ordered by the Board.

1           17.   Obey All Laws. Respondent shall obey all federal, state and local laws, and  
2 all rules governing the practice of medicine in the State of Arizona.

3           18.   Interviews. Respondent shall appear in person before the Board and its  
4 Staff and MAP committees for interviews upon request, upon reasonable notice.

5           19.   Address and Phone Changes, Notice. Respondent shall immediately  
6 notify the Board in writing of any change in office or home addresses and telephone  
7 numbers.

8           20.   Relapse, Violation. In the event of chemical dependency relapse by  
9 Respondent or Respondent's use of drugs or alcohol in violation of the Order, Respondent  
10 shall promptly enter into an Interim Consent Agreement for Practice Restriction that  
11 requires, among other things, that Respondent not practice medicine until such time as  
12 Respondent successfully completes long-term inpatient or residential treatment program  
13 for chemical dependency designated by Board Staff and obtains affirmative approval from  
14 the Board or the Executive Director to return to the practice of medicine. Prior to  
15 approving Respondent's request to return to the practice of medicine, Respondent may be  
16 required to submit to witnessed biological fluid collection, undergo any combination of  
17 physical examination, psychiatric or psychological evaluation and/or successfully pass the  
18 special purpose licensing examination or the Board may conduct interviews for the  
19 purpose of assisting it in determining the ability of Respondent to safely return to the  
20 practice of medicine. **In no respect shall the terms of this paragraph restrict the**  
21 **Board's authority to initiate and take disciplinary action for violation of this Order.**

22           21.   Notice Requirements.

23               (A) Respondent shall immediately provide a copy of this Order to all  
24 employers and all hospitals and free standing surgery centers where Respondent currently  
25 has privileges. Within 30 days of the date of this Order, Respondent shall provide the

1 Board with a signed statement of compliance with this notification requirement. Upon any  
2 change in employer or upon the granting of privileges at additional hospitals and free  
3 standing surgery centers, Respondent shall provide the employer, hospital or free standing  
4 surgery center with a copy of this Order. Within 30 days of a change in employer or upon  
5 the granting of privileges at additional hospitals and free standing surgery centers,  
6 Respondent shall provide the Board with a signed statement of compliance with this  
7 notification requirement.

8 (B) Respondent is further required to notify, in writing, all employers,  
9 hospitals and free standing surgery centers where Respondent currently has or in the  
10 future gains employment or privileges, of a chemical dependency relapse, use of drugs or  
11 alcohol in violation of this Order and/or entry into a treatment program. Within seven days  
12 of any of these events Respondent shall provide the Board written confirmation of  
13 compliance with this notification requirement.

14 22. **Public Record.** This Order is a public record.

15 23. **Out-of-State.** In the event Respondent resides or practices as a physician in  
16 a state other than Arizona, Respondent shall participate in the rehabilitation program  
17 sponsored by that state's medical licensing authority or medical society. Respondent shall  
18 cause the monitoring state's program to provide written reports to the Board regarding  
19 Respondent's attendance, participation, and monitoring. The reports shall be due quarterly  
20 on or before the 15th day of March, June, September, and December of each year, until  
21 the Board terminates this requirement in writing. The monitoring state's program and  
22 Respondent shall immediately notify the Board if Respondent: a) is non-compliant with any  
23 aspect of the monitoring requirements; b) relapses; c) tests positive for controlled  
24 substances; d) has low specific gravity urine drug test(s), missed and/or late urine drug  
25

1 tests, or otherwise rejected urine drug tests; and e) is required to undergo any additional  
2 treatment.

3       **24.** This Order supersedes all previous consent agreements and stipulations  
4 between the Board and/or the Executive Director and Respondent.

5       **25.** The Board retains jurisdiction and may initiate new action based upon any  
6 violation of this Order.

7           A.     Third Party Presence (Female Chaperone)

8       Respondent shall have a **third party female chaperone**, whose view is  
9 unencumbered, present whenever Respondent interacts with female patients in all settings  
10 including, but not limited to, office, hospital and clinic. The **third party female chaperone**  
11 must be a licensed allied healthcare provider (i.e., physician assistant, registered nurse,  
12 licensed practical nurse) employed by the Respondent, hospital or clinic and may not be a  
13 representative or relative who accompanied the patient. Respondent shall instruct the  
14 **third party female chaperone** to remain in the room at all times when Respondent is with  
15 the patient. Respondent shall instruct the **third party female chaperone** to document her  
16 presence by signing, dating and legibly printing her name on each patient's chart at the  
17 time of the examination. Respondent shall instruct the **third party female chaperone** to  
18 immediately report any inappropriate behavior to Respondent and the Board. Board Staff  
19 may perform random periodic reviews to ensure compliance with this Order.

20           B.     Psychological Counseling Services

21       Respondent shall promptly enroll in Psychological Counseling Services (PCS) and  
22 shall remain in enrolled for a minimum of **twelve months**. Respondent shall comply with  
23 PCS's recommendations for continued care and treatment. Respondent shall instruct PCS  
24 to submit quarterly written reports to the Board regarding diagnosis, prognosis, and  
25 recommendations for continued care and treatment. The reports must be submitted on or

1 before the 15<sup>th</sup> day of March, June, September, and December. Respondent shall provide  
2 PCS with a copy of this Order. Respondent shall pay the expenses of all care/therapy and  
3 is responsible for paying for the preparation of the quarterly reports. After **twelve months**,  
4 Respondent may submit a written request that the Board terminate the requirement that  
5 Respondent remain in treatment at PCS. The Board's decision to terminate will be based,  
6 in part, upon PCS's recommendation for continued care and treatment.

7 C. Obey All Laws

8 Respondent shall obey all state, federal and local laws, all rules governing  
9 the practice of medicine in Arizona, and remain in full compliance with any court order  
10 criminal probation, payments and other orders.

11 D. Tolling

12 In the event Respondent should leave Arizona to reside or practice outside the  
13 State or for any reason should Respondent stop practicing medicine in Arizona,  
14 Respondent shall notify the Executive Director in writing within ten days of departure and  
15 return or the dates of non-practice within Arizona. Non-practice is defined as any period of  
16 time exceeding thirty days during which Respondent is not engaging in the practice of  
17 medicine. Periods of temporary or permanent residence or practice outside Arizona or of  
18 non-practice within Arizona, will not apply to the reduction of the probationary period.

19 3. This Order is the final disposition of case number MD-06-0259A.

20 DATED AND EFFECTIVE this 9<sup>th</sup> day of February, 2008.<sup>7</sup>

21  
22 (SEAL)



ARIZONA MEDICAL BOARD

23  
24 By

25 TIMOTHY C. MILLER, J.D.  
Executive Director

ORIGINAL of the foregoing filed

1 this 9<sup>th</sup> day of February, 2008<sup>7</sup> with:

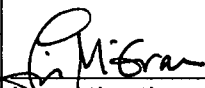
2 Arizona Medical Board  
3 9545 E. Doubletree Ranch Road  
4 Scottsdale, AZ 85258

5 EXECUTED COPY of the foregoing mailed  
6 this 9<sup>th</sup> day of February, 2008<sup>7</sup> to:

7 Mr. Calvin Raup  
8 Shughart Thomson & Kilroy  
9 3636 N. Central Avenue Suite 1200  
10 Phoenix, AZ 85012-1998

11 EXECUTED COPY of the foregoing mailed  
12 this 9<sup>th</sup> day of February, 2008<sup>7</sup> to:

13 John C. Morgan, M.D.  
14 Address of Record

15 

16 Investigational Review